

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item # 12 (Rev. 1)

ID #14734

ENERGY DIVISION

RESOLUTION E-4765

April 21, 2016

R E S O L U T I O N

Resolution E-4765 Pacific Gas and Electric Company (PG&E)
Fordyce Lake Conservation Easement Donation Request for
Approval under Advice Letter (AL) 4687-E, and P.U. Code Section
851.

PROPOSED OUTCOME:

- This Resolution dismisses the Protests of Noma M. Campbell, Art Stine, Jo Snyder, Joe Chavez, Mitch Hammond, Rowdy Fitzgerald, Benjamin Holland, Josh Ebel, Justin Cole, Phil Licciardi, Mark and Danielle Kohut, Gary A. Marr, Jacquelyne Theisen, Jeff Blewett, Warren Story, Dan Lee, and Douglas Poppelreiter, and approves Pacific Gas & Electric Company's (PG&E's) AL 4687-E, with an effective date of today. PG&E's AL proposes encumbrance with two perpetual conservation easements (CE) of approximately 1,937 acres of land in Nevada County known as Fordyce Lake Planning Unit. Bear Yuba Land Trust, a California non-profit public benefit corporation will hold both CEs. PG&E will retain fee title to the property, and the CE will be granted subject to certain reserved rights in favor of PG&E for the continued operation of PG&E's hydroelectric and water delivery facilities pursuant to PG&E's Bankruptcy Settlement Agreement that established a Land Conservation Commitment (LCC).

SAFETY CONSIDERATIONS:

- Effective administration of PG&E's LCC is part of the responsibility of PG&E to meet their obligations under Public Utilities Code Section 451 to provide services that promote the safety, health, comfort, and convenience of their patrons, employees and the public.

ESTIMATED COST:

- In D.03-12-035, the Commission approved the LCC with funding at \$70 million. Ongoing fees for managing the CE are to be covered by the previously authorized LCC funding.

By Advice Letter 4687-E filed on August 10, 2015.

SUMMARY

This Resolution approves PG&E's AL 4687-E, with an effective date of today. On August 10, 2015 PG&E filed Advice Letter 4687-E, requesting approval under Public Utilities Code Section 851, of the Fordyce Lake Conservation Easement Donation.

Pursuant to PG&E's LCC approved in D.03-12-035, PG&E proposes encumbering with two perpetual CEs approximately 1,937 acres of land in Nevada County know as Fordyce Lake Planning Unit (Property). One CE is for the Meadow Lake area (Meadow Lake), encompassing approximately 196 acres. The second CE is for the Fordyce Lake and Sterling Lake area encompassing approximately 1,741 acres. Bear Yuba Land Trust, a California non-profit public benefit corporation, will hold the CE. This donation is being made in the public interest with the intent to provide for: (1) the preservation of land areas to protect the natural habitat of fish, wildlife, and plants; (2) the protection of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values; and (3) the prevention of any uses that will significantly impair or interfere with those values. This donation is in accordance with the terms and conditions specified in the PG&E Bankruptcy Settlement Agreement and Stipulation that were approved by the Commission (CPUC) in D. 03-12-035.¹

¹ The Settlement Agreement provides a substantially increased opportunity for environmentally beneficial use and access by the public to 140,000 acres of land associated with PG&E's hydroelectric facilities, without compromising the ability of PG&E to generate electricity from those facilities. In 1999 PG&E proposed to sell these lands to the highest bidder. The Settlement Agreement would remove forever that possibility, and replace the specter of loss of public control with the promise of perpetual public access. (D.03-12-035, pages 61, 62.)

BACKGROUND

On April 6, 2001, PG&E filed for Chapter 11 bankruptcy protection. Two years later, CPUC approved a Settlement Agreement under which PG&E Watershed Lands would be subject to CEs and/or be donated in fee simple to public entities or non-profit organizations for the benefit of the public. Pursuant to the Settlement Agreement, the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) was established in 2004 to develop a plan to permanently protect, for the benefit of the citizens of California, more than 140,000 acres of Watershed Lands currently owned by PG&E.

Located primarily in the Sierra Nevada and Cascade Mountain range watersheds, the PG&E Watershed Lands contain some of the most pristine and resource-rich landscapes found in the state. The properties are diverse and geographically remote, located in 21 counties from the northern reaches of the state to the southern end of the Central Valley.

Protecting the Watershed Lands will be accomplished through (1) PG&E's grant of CEs to one or more public agencies or qualified conservation organizations so as to protect the natural habitat of fish, wildlife and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values (collectively the Beneficial Public Values), and (2) PG&E's donation of the Watershed Lands in fee simple to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives. This effort is known as PG&E's "Land Conservation Commitment" (LCC).

As required by D.03-12-035, the Stewardship Council prepared a Land Conservation Plan (LCP) to establish a framework for the conservation and/or enhancement of the Watershed Lands, and to ensure the permanent protection of these lands for the benefit of current and future Californians. To address the challenge of a conservation effort of this large scope, and to facilitate engagement of a wide range of stakeholders and interested members of the public, the Stewardship Council grouped the Watershed Lands into 47 planning units and established a phased approach to development and implementation of the LCP.

In 2007, the Stewardship Council Board adopted Volumes I and II of the LCP:

Volume I: The Land Conservation Framework establishes the overall framework for the LCP, including legal requirements, the planning process, methodologies, public involvement, and relevant regulatory processes.

Volume II: Planning Unit Concepts documents existing conditions and presents management objectives, potential measures, and conceptual plans to preserve and/or enhance the Beneficial Public Values (BPVs) within each planning unit. The management objectives for the Fordyce Lake planning unit are:

1. Preserve and enhance habitat in order to protect special biological resources and wilderness values;
2. Preserve open space in order to protect natural and cultural resources, viewsheds, and the recreation setting;
3. Enhance recreational facilities in order to provide additional public access and education and recreation opportunities;
4. Develop and implement forestry practices in order to contribute to a sustainable forest, preserve and enhance habitat, enhance surrounding wilderness values, as well as to ensure appropriate fuel load and fire management;
5. Identify potential grazing opportunities in order to enhance agricultural resources and related economic benefits;
6. Identify and manage cultural resources in order to ensure their protection.

Volumes II and III also document existing economic uses.

Volume III: Land Conservation and Conveyance Plans (LCCPs) to be issued serially and cumulatively will encompass a series of real estate transaction packages that will detail the specific land conservation and/or disposition requirements for each parcel or cluster. LCCPs represent the Stewardship Council's recommendations for preserving and/or enhancing the BPVs of the

Watershed Lands to PG&E, and are intended to support required regulatory approvals of the land transactions.²

Specifically, the LCCP produced for each parcel will incorporate the 10 programmatic objectives of the LCP as identified in the Stipulation that was an integral part of the Proposed Settlement Agreement adopted in D.03-12-035. These 10 programmatic objectives, which are intended to govern how the LCP is implemented for each and every Watershed Parcel, include: 1) reasonably exact estimates of acreage, by parcel, within or outside licensed project boundaries, and existing economic uses (including all related agreements); (2) objectives to preserve and/or enhance beneficial public values, as defined in the Settlement Agreement, Appendix E, of each individual parcel; (3) a recommendation for grant of a conservation easement or fee simple title for each such parcel; (4) a finding that the intended recipient of such easement or fee simple title has the funding and other capacity to maintain that property interest so as to preserve and/or enhance the beneficial public values thereof; (5) an analysis of tax and other economic and physical impacts of such a disposition strategy, and a commitment by an appropriate entity to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county under this Land Conservation Commitment will be “tax neutral” for that county³; (6) a disclosure of all known hazardous waste or substance contamination or other such environmental liabilities associated with each parcel; (7) appropriate consideration of whether to split any parcel which is partly used or useful for operation of PG&E’s and/or co-licensee’s hydroelectric facilities, where the beneficial public values of the unused part may be enhanced by such split, provided it is consistent with

² The LCCP addresses the requirements set forth in Section 12(a) of the “Stipulation Resolving Issues Regarding the Land Conservation Commitment” September 25, 2003.

³ The Stewardship Council has agreed that it is the appropriate entity to provide property tax revenue, drawing from the \$70 million provided to the Stewardship Council to implement the Land Conservation Commitment. In Finding #14 of Resolution E-4644, which was approved on August 14, 2014, the Commission made the following finding: The Commission agrees with the Stewardship Council that the tax neutrality payment to Tehama County may come from the LCC fund. (Deer Creek LCCP, November 14, 2003).

Section 12(b)(4) of this stipulation; (8) a strategy to undertake appropriate physical measures to enhance the beneficial public values of individual parcels; (9) a plan to monitor the economic and physical impacts of disposition and implementation of enhancement measures on the applicable management objectives; and (10) a schedule for the implementing transactions and measures.

Advice Letter 4687-E Fordyce Lake Conservation Easement Donation Land Conservation and Conveyance Plan (LCCP)

In compliance with the Stipulation 12(a) requirements, the following disclosures are included in all Watershed Lands Section 851 advice letter filings:

Acreage and Property Description

The Property, identified as Parcels 776-778 (Meadow Lake, approximately 196 acres) and Parcels 779-789 (Fordyce and Sterling Lakes, approximately 1,741 acres) will be retained by PG&E subject to a perpetual conservation easement held by the Bear Yuba Land Trust (BYLT).⁴ The Property is located in Nevada County, approximately 15 miles west of Truckee at an approximate elevation range of 6,200 to 7,800 feet and provides outdoor recreation and important wildlife habitat in the remote, upper elevations of the northern Sierra Nevada. Recreation opportunities at the Property include camping, fishing, hiking, hunting, cross-country skiing, off-highway vehicle (OHV) use, and boating. Fordyce, Meadow, and Sterling Lakes are popular fishing destinations. Camping is popular at Sterling Lake.

There are three PG&E Timber Management Units (TMUs) totaling 677 timbered acres on the land to be retained by PG&E in Nevada County. Two of the TMUs, Meadow Lake and Sterling Lake are currently managed for Multiple-Uses, which allows for sustained timber production as an important management component, while at the same time recognizing the protection and uses of other resources and facilities may exclude sustained timber harvesting as the best use of these forests. The other TMU (Fordyce Lake) is managed under a Salvage prescription, which allows harvesting following insect attack or catastrophic event.

⁴ Bear Yuba Land Trust, 12183 Auburn Road, Grass Valley, CA 95949

No agricultural activities (farming or grazing) occur within the planning unit.

The Washoe are historic inhabitants of the area, and evidence of Native American settlement is present in the Fordyce Lake area. The Meadow Lake Area in particular is known for its valuable historic and prehistoric resources.

Adjacent and Nearby Land Owners

The 14 parcels within the Fordyce Lake planning unit to be retained by PG&E in Nevada County are surrounded by a checkerboard mixture of private lands, Sierra Pacific Industries lands and National Forest System lands managed by the Tahoe National Forest. Most of the Parcels are accessed from USFS roads (Meadow Lake Road, Fordyce Lake Road, and Sterling Lake Road), some of which are only passable by four-wheel-drive vehicles. Some parcels at Fordyce Lake are not accessible by vehicle.

Existing Economic Uses and Agreements

There is one lease agreement for economic use on the property to be retained by PG&E, for a Boy Scouts of America Summer Camp at Sterling Lake.

There are recorded encumbrances for roads on the 1,937 acres to be retained by PG&E within Parcels 776-789. PG&E will reserve rights in the conservation easement as necessary to maintain and operate existing and future utility facilities over portions of the parcels. The specific Hydro Reserved Rights are set forth in the conservation easement.

Objectives to preserve and/or enhance the Beneficial Public Values

The Land Conservation Commitment provides that “PG&E shall ensure that the Watershed Lands it owns...are conserved for a broad range of beneficial public values (BPVs) including the protection of the natural habitat of fish, wildlife and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values.

The following text lists the objectives for each Property BPV that the Stewardship Council Board approved in LCP Volume II, as well as a description of how the conservation easement addresses each objective and each applicable BPV.

- 1. Preserve and enhance habitat in order to protect special biological resources and wilderness values.*

The conservation easement provides for the protection of “habitat for plants and animals that are native to the area, including species protected under the California Endangered Species Act and/or the federal Endangered Species Act.

- 2. Preserve open space in order to protect natural and cultural resources, viewsheds, and the recreation setting.*

The conservation easement will conserve the scenic character of the property by ensuring that no further development will occur unless specifically authorized or permitted by the conservation easement.

- 3. Enhance the recreational facilities in order to provide additional public access, and education and recreational opportunities.*

The conservation easement acknowledges that outdoor recreational facilities exist on the property, and lists recreational uses including camping, swimming, hiking, boating and sightseeing as a BPV ensuring the protection and preservation of such uses in perpetuity. Furthermore, the conservation easement provides that the landowner will allow public access on the property at levels substantially consistent with those existing at the time the conservation easement is recorded, subject to PG&E’s Hydro Reserved Rights and right to make reasonable rules and regulations.

- 4. Develop and implement forestry practices in order to contribute to a sustainable forest, preserve and enhance habitat, enhance surrounding wilderness values, as well as to ensure appropriate fuel load and fire management.*

Forest management activities will be subject to compliance with applicable laws and conducted as further described and allowed in the conservation easement.

- 5. Identify potential grazing opportunities in order to enhance agricultural resources and related economic benefits.*

There is currently no managed grazing within the planning unit.

- 6. Identify and manage cultural resources in order to ensure their protection.*

The conservation easement will protect historic and cultural resources (as defined in Title XIV of the California Code of Regulations) on the Property consistent with applicable laws and regulations.

Recommendation for Conservation Easement and Fee Simple Retention

All 1,937 acres within 14 parcels (776-789) of the Property will be retained in fee by PG&E. 248 acres within four parcels (791-794 in Placer County) of the Fordyce Lake planning unit will also be retained in fee by PG&E, but will be the subject of a separate LCCP. Additionally, 17 acres within Parcel 775 of the

Fordyce Lake planning unit will be retained by PG&E, but will also be the subject of a separate LCCP.

The remaining 75 acres in the Fordyce Lake planning unit will be donated by PG&E and will be the subject of a separate LCCP.

Finding of Donee Funding and Other Capacity to Maintain Lands to Preserve and/or Enhance the BPVs

The Stewardship Council invited organizations to join its registry and submit a statement of qualifications (SOQs). The Stewardship Council then reviewed the SOQs, and organizations that appeared capable were invited to submit additional information describing their qualifications. Organizations demonstrating sufficient experience holding and enforcing CEs, sufficient financial and organizational capacity, and which the Stewardship Council has determined to be best-suited to receive a donation of CEs within particular Watershed Lands are recommended to PG&E to receive CEs.

At the conclusion of the selection process, the Stewardship Council board found that Bear Yuba Land Trust (BYLT) has the funding and other capacity to maintain the property interest so as to preserve and/or enhance the BPVs. BYLT was established in 1991 and, as of 2014, holds 22 conservation easements on over 6,000 acres in Nevada County and the Sierra Foothills areas of Yuba and Sierra Counties. BYLT has 11 staff including an executive director, operations manager, development director, stewardship manager, conservation coordinator, program coordinator and three trail coordinators. BYLT has eight board members with expertise in wildlife biology, conservation planning, fly fishing, and forestry. BYLT is an accredited land trust by the Land Trust Alliance.

Analysis of Tax and Other Economic and Physical Impacts

The Settlement and Stipulation adopted by D.03-12-035, requires that the LCCP provide: “an analysis of tax and other economic and physical impacts of such a disposition strategy, and a commitment by an appropriate entity (which may be PG&E, subject to being authorized by the Commission to fully recover in rates any such costs in approving PG&E’s Section 851 application or in another appropriate Commission proceeding, Stewardship Council, donee, or a third party, depending on the individual circumstances) to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the

totality of dispositions in each affected county under this Land Conservation Commitment will be “tax neutral” for that county”.⁵

To achieve property tax neutrality, the Stewardship Council has developed a methodology to establish a standard payment process when lands are transferred to organizations that are exempt from paying property taxes. The methodology would be applied to all counties that experience a loss in property tax revenue due to a fee title donation. Because PG&E is retaining fee title ownership of 1,937 acres within Parcels 776-789 of the Fordyce Lake planning unit, PG&E will continue to pay property taxes to Nevada County as assessed by the State Board of Equalization.

The Settlement and Stipulation require an analysis of the physical and economic impacts of each disposition. The agreements for the conservation easement on parcels 776-789 of the Fordyce Lake planning unit have not mandated any changes to the physical or economic uses and PG&E intends to manage the lands in a manner consistent with the current physical and economic uses.

No new activities are proposed that will result in physical impacts.

California Environmental Quality Act

The Stewardship Council did not identify any physical measures to enhance the BPVs of the Property. While transfers of ownership of utility property under Public Utilities Code Section 851 may have an environmental impact, and accordingly constitute projects under the California Environmental Quality Act (CEQA), here the proposed retention of the Property parcels 776-789 and donation of conservation easement to BYLT results in no proposed changes to land uses; thus no direct or indirect environmental impacts will occur as a result of the donation. Therefore, the transaction is exempt due to the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and does not require review under CEQA.

Hazardous Waste Disclosure

⁵ Stipulation Resolving Issues Regarding The Land Conservation Commitment (page 8)

The stipulation states that in the transfer of fee title and conveyance of a conservation easement, PG&E will disclose all known hazardous waste, substance contamination, or other such environmental liabilities associated with each parcel and hold the donee harmless. The hazardous waste disclosure found no potential hazardous waste, substance contamination, or other such environmental condition on the Property.

Consideration of Parcel Split

PG&E will retain fee title to all 1,937 acres within Parcels 776-789 of the Fordyce Lake planning unit. Therefore, there is no need for a parcel split.

Strategy for Physical Measures to Enhance BPVs

The Stewardship Council has not identified any physical measures to enhance the beneficial public values of the Property. The Stewardship Council is developing a grant program to fund enhancements on the Watershed Lands in the future. Grant funding will be available to accomplish any number of potential future physical measures such as developing trails, day use areas, and other public access improvements.

Monitoring Plan for the Economic and Physical impacts of Disposition and Implementation of Enhancement Measures

The Stipulation requires that the LCCP outlines a plan to monitor the economic and physical impacts of disposition and implementation of enhancement measures. The conservation easement holder is required to monitor every conservation easement that it holds to ensure that the landowner is complying with the terms of the easement in perpetuity. The Stewardship Council has entered into a Conservation Easement Funding Agreement with BYLT whereby the Stewardship Council will provide a monitoring and enforcement endowment to fund BYLT's monitoring activities on the Property.

Implementation Schedule for Transaction and Measures

The implementation schedule for the Fordyce Lake Transaction indicates CPUC review and approval in early 2016 and close of escrow in 2016. The Stewardship Council will release funds to BYLT per the conservation easement funding agreement when the conservation easement is recorded.

NOTICE

Notice of AL 4687-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter AL 4687-E was protested by Noma M. Campbell, Art Stine, Jo Snyder, Joe Chavez, Mitch Hammond, Rowdy Fitzgerald, Benjamin Holland, Josh Ebel, Justin Cole, Phil Licciardi, Mark and Danielle Kohut, Gary A. Marr, Jacquelyne Theisen, Jeff Blewett, Warren Story, Dan Lee, and Douglas Poppelreiter. The protests were filed from August 24-September 4, 2015.

Protest of Ms. Noma M. Campbell

Noma M. Campbell indicated she did not receive notification of PG&E's intention to encumber the Property with a perpetual easement to be held by the BYLT.

PG&E Reply to Ms. Campbell

Ms. Campbell did receive a copy of Advice Letter 4687-E that was served on parties in accordance with the procedures set forth in D.03-12-035 and D.08-11-043 (as modified by D.10-08-004). As part of its process to seek public input on recommended transactions, the Stewardship Council is required per D.03-12-035 to provide notice to "the Board of Supervisors of the affected county, each affected city, town, and water supply entity, each affected Tribe and/or co-licensee, and each landowner located within one mile of the exterior boundary of the parcel." The Stewardship Council informed PG&E that it provided the required notice for this transaction on September 17, 2014. The notice included details of the proposed transaction and instruction for viewing the LCCP online or, alternatively, directions to receive a copy of the draft by mail. This notice was sent via U.S. Mail to Ms. Campbell at her address on record in Vancouver, WA, which is different from her current residence in Spokane Valley, WA. PG&E confirmed that no return letter indicating the notice was undeliverable was received by the Stewardship Council.

Following receipt of her objection letter, PG&E contacted Ms. Campbell by telephone to better understand the nature of her objection. PG&E understood from this outreach that Ms. Campbell misinterpreted the intent of the Advice filing to mean that her property in Nevada County would be subject to the

proposed CE. In response PG&E informed Ms. Campbell that she received a copy of the Advice Letter in accordance with the required noticing procedures, pursuant to which owners of neighboring properties would be informed about proposed actions related to the implementation of PG&E's LCC, but that the proposed CE pertains only to PG&E owned property. PG&E believes Ms. Campbell was satisfied with the clarification around the intent of the Advice filing. PG&E committed to provide a written response summarizing the conversation. Accordingly, this Reply to Protests was mailed to Ms. Campbell at the address provided in her letter to PG&E.

Protest of Mr. Stine, Ms. Snyder, Mr. Chavez, Mr. Hammond, Mr. Fitzgerald, Mr. Holland, Mr. Ebel, Mr. Cole, Mr. Licciardi, Mr. and Mrs. Kohut, Mr. Marr, Ms. Theisen, Mr. Blewett, Mr. Story, Mr. Lee, and Mr. Poppelreiter. (Joint Protesters)

Item 1: Committee Trail

The Joint Protesters point out that the property in question has been available for recreational use by the public, and seeks to ensure that such uses can continue. Specifically, protesters point out that the map of Fordyce Lake is missing an existing and currently used OHV route (commonly known in the OHV user community as the "Committee Trail") that has been in place for roughly 50 years extending from Fordyce Lake to the edge of Fordyce Creek, across Parcels 788 and 786. There is established OHV signage (by PG&E) marking the trail at the Fordyce Lake end of the trail. This route is shown clearly on the map of Fordyce Lake in the Draft EIS Tahoe National Motorized Travel Management Plan. The trail is seasonally used to access the Fordyce Trail for general OHV recreation and is maintained by a variety of groups, including Friends of Fordyce. The route is also used as means to exit the Fordyce Creek Trail by users in distress.

Item 2: Camping on Fordyce and Sterling Lakes

Protesters note that the Final LCCP explicitly omits camping as a passive recreational pursuit for the areas around Fordyce Lake and Sterling Lake. Protesters note that primitive/dispersed camping along Fordyce Lake; primarily the western shore is a long established and documented recreational use of the area. Protesters note that there are currently no developed recreation facilities, but mention that the FERC Recreation Facilities Plan proposes to construct 7-10 primitive campsites in the next 5 years. Protesters believe that developing the proposed 7-10 sites would help to meet existing demand and would reduce the user effects generally associated with dispersed camping at undeveloped sites.

Protesters recommend that given the current level of demand, campsite development should occur within 3 years.

PG&E's Reply to Joint Protesters

PG&E's reply to the objections raised by the Joint Protesters as follows:

Informal uses of the Property are not prohibited by the proposed CE. The absence of reference to a specific use on the Property in either the LCCP or CE does not mean that such a use is prohibited.

The proposed CE addressed third party uses in a couple of specific ways. First, the Settlement Agreement (D.03-12-035, Appendix E) requires that conservation "easements will honor existing agreements for economic uses..." in this context existing agreements for economic uses are those uses subject to formal written agreements in existence at the Effective Date of the CE and between PG&E and a third party authorizing and establishing terms and conditions to conduct such uses.

Second, because most public uses of the watershed lands are not subject to existing agreements, the proposed CE also preserves "informal" uses, which is consistent with the intent of PG&E's Land Conservation Commitment to preserve public access to the watershed lands. In particular, Section 9.2 of the CE (Informal Uses and Public Access) acknowledges the existence of and requires PG&E to allow public access on the Property that is substantially consistent with the Effective Date of the CE, subject to reasonable rules and regulation, liability limitations, and annual review with the CE holder to ensure the overall preservation of the BPVs on the Property.

The proposed CE does not attempt to provide an exhaustive list of public recreational uses of the encumbered lands because that would be virtually impossible to define given the broad range of potential public uses. Rather, the CE preserves informal uses categorically and lists a representative sample of recreational uses and related physical features, particularly those that are observed during site visits by the Land Trust during its development of the Baseline Documentation Report (BDR) and/or those that are required by the relevant FERC Project License.

PG&E Response to the Committee Trail issue

Protestors note that the maps in the LCCP prepared by the Stewardship Council in support of its recommendation to PG&E regarding the donation of a CE to BYLT on the Property do not show the alignment of the unimproved road on the Property commonly referred to as the “Committee Trail” (Trail) in the protests, nor does the LCCP contain specific reference to an encumbrance associated with the trail. Protesters also note restrictions on the use of vehicles included in both Section 5 and Section 9 of Exhibit F of the CE (Prohibited Uses).

PG&E acknowledges that the public has been allowed to use the Trail for recreational purposes, including Off Highway Vehicle uses described by the Protesters, and PG&E continues to accommodate such an informal use of the Property. The lack of specific reference to the Trail in the LCCP, coupled with the identified prohibitions in the CE, appears to have been misunderstood by the Protesters to mean that continued use of the Trail following execution of the CE would not be allowed. However, there is no basis for concluding that continued use of the Trail will be prohibited under the proposed CE.

Although PG&E allows the public to utilize the Property for such purposes, the Trail is not a legally recognized encumbrance on the Property (i.e., it is not subject to any legal agreement with any individual or organization authorizing an informal use in the context of the proposed CE). As noted above, informal uses of the Property are categorically allowed to continue subject to the terms and conditions of the CE.

Section 5 of Exhibit F limits the use of motorized vehicles to existing roadways, and Section 9 of Exhibit F places limitations on the construction and relocation of roads and trails as a way to protect the BPVs on the Property. Protesters’ assertion that incorporation of a reference to the Trail in the LCCP would constitute the creation of an encumbrance on the Property is not accurate. The LCCP itself cannot create rights, title, and/or interest in the Property. As such, the incorporation of references to the Trail (or any other road) in the LCCP would not have the assumed force and effect of creating an encumbrance or otherwise establish a legal basis for interpreting the CE requirements. Likewise, references to the Trail in the environmental documents cited by Protesters do not create right, title, or interest in the property.

PG&E suggests an alternative method to address Protesters’ concerns about the informal use of the Trail. As defined in Section 3 of the proposed CE, the Baseline

Documentation Report (BDR) is a report mutually agreed upon by BYLT and PG&E as an accurate representation of existing conditions of the Property on the Effective Date of the CE and is intended to serve as an objective, though non-exclusive information baseline for monitoring compliance with the terms of the CE. Because it serves as the documentation of physical conditions of the Property against which compliance with CE terms will be measured, including those associated with informal uses, documentation of the Trail is more appropriately included in the BDR rather than the LCCP. Accordingly, prior to the Effective Date of the CE, PG&E will confer with BYLT and ensure that both the location and condition of the Trail have been documented in the BDR in a way that ensures appropriate recognition of the public use of the Trail as an existing informal use of the Property. BDRs are typically not provided as attachments to Advice filings related to implementation of the D. 03-12-035 because they are subject to change up to the effective date of the CE to ensure the baseline conditions of the property are true and accurate as of the Effective Date. However, PG&E will provide the Commission with a copy of the final BDR in advance of recording the CE to ensure the Commission is apprised of the contents therein.

Although incorporating the Trail in the BDR will not create a formal right of use by Protestors, or the public generally, it will document the existence of this informal use, which will be allowed to continue subject to the terms of the proposed CE, including reasonable rules and regulations, liability limitations, and annual review with the CE holder to ensure the overall protection of the BPVs on the Property.

PG&E Response to Camping at Fordyce Lake

As noted, the absence of a reference to a specific use on the Property in either the LCCP, or CE does not mean that such a use is prohibited. Although camping is not specifically noted, the proposed CE accommodates a broad range of public uses by providing that PG&E must allow public access on the Property that is substantially consistent with the public access on the Effective Date of the CE. As an existing informal use of the Property, camping at user-created campsites

will be governed per the terms of Section 9.2 and will not be expressly prohibited per the terms of the CE.⁶

It is important to note that the hydroelectric Project on the Property will be subject to a proposed Recreation Facilities Plan⁷ associated with the pending FERC License governing recreational activities at Fordyce Lake. To minimize fire danger and uncontrolled resources impacts, the Recreation Plan proposes to develop designated formal camping where fire safe vegetation clearings will be maintained and to prohibit camping in informal user-created campsites outside of these designated campsites (see below Designated Camping Policy from the referenced Recreation Plan).

3.4.5 Designated Camping Policy

“As a policy, PG&E will limit camping to designated campsites within the FERC Project Boundary on PG&E and (National Forest Service) NFS Lands. PG&E will also work with the Forest Service to pass a Forest Order to maintain a consistent policy on Forest Service lands within the FERC Project Boundary. PG&E will also pursue county ordinances in Nevada and Placer Counties to prohibit camping outside of designated campsites on PG&E lands. In implementing this policy, PG&E, as a private landowner, may request the Sheriff’s assistance to address non-compliance under trespass laws on PG&E lands within the FERC Project Boundary. This policy applies to camping in

⁶ Informal Uses and Public Access. “Grantor and Grantee recognize that the Property has been used by third parties for recreational, cultural, and other non-commercial or informal purposes without formal written agreements to conduct such activities (the “informal uses”). Grantor and Grantee further recognize that access is inherent or may be inherent in the enjoyment of Beneficial Public Values and the informal uses. Consistent with the objectives articulated in the Governing Documents to provide continued reasonable access to the Property (other than Hydro Operating Zones) that is substantially consistent with the public access existing on the Effective Date...”
Fordyce Lake LCCP Appendix 2 Conservation Easement, page 46.

⁷ Recreation Facilities Plan, Drum-Spaulding Project, FERC Project No. 2310. September, 2013.

designated sites only at the following lakes: Fordyce, Rucker, Blue, Lower Lindsey, Carr, Meadow, Kelly, Kidd, Peak, and Lake Valley lakes. Fuller will remain a "No Camping Lake".

Development of camping sites and other prescriptions (such as those set forth in the Recreation Plan) are expressly allowed per the terms of the CE. In particular, Section 7 of the CE (Grantor's Reserved Rights) includes express provisions that allow PG&E to undertake all actions required on the Property by any one or more of the following: (a) the Commission, FERC, or any other governmental entity having jurisdiction over Grantor's use, ownership, operation, or management of the Property, including the Hydro Project Activities, or (b) any Applicable Law (as defined in Section 8) or (c) any Third Party Agreements, or (d) to comply with professional practices, standards and/or policies governing the Hydro Project Activities.

PG&E supports continued use of the Property by the public for camping but, as explained above, when the new FERC License is issued, will manage such use in accordance with the Recreation Plan to ensure the public is allowed to enjoy the recreational opportunity in a way that reduces risk of wildfire and supports protection of the natural resources on the Property. The CE does not prohibit or otherwise interfere with PG&E's ability to implement the Recreation Plan.

DISCUSSION

Protest of Ms. Campbell

The Commission has reviewed PG&E AL 4687-E and the protests to AL 4687-E of and the reply to those protests by PG&E. The Commission is satisfied that the reply of PG&E demonstrates that the required notice was provided to Ms. Campbell. The Stewardship Council provided required notice in accordance with D.03-12-035. Additionally, PG&E reached out to Ms. Campbell by telephone to clarify that the CE pertains to only PG&E-owned property. On February 22, 2016 Commission staff contacted Ms. Campbell by phone to ascertain that the PG&E written response and telephone outreach had adequately addressed her concerns. Indeed, Ms. Campbell reported that she had assumed that the notice she received by virtue of owning land within the vicinity of the subject PG&E property, indicated that her property would also be affected. Staff reiterated that the proposed CE would in no way affect her property rights and explained to Ms. Campbell that the CE would limit the ability of PG&E to

develop the Fordyce Lake Property in the Future. With this clarification, the Commission is satisfied that the concerns of Ms. Campbell have been allayed. Therefore, the protest of Ms. Campbell is dismissed.

Joint Protesters

As detailed above, the protests to AL 4687-E were filed in response to protesters' concern that the CE could place restrictions on informal recreational use of the Property. Protesters have two specific concerns: 1. continued use the Committee Trail for OHV recreational use; and 2. Continued use of informal camping within the Property.

Committee Trail

Regarding the concerns of Protesters, the Commission is satisfied by the reply of PG&E which explains that off-highway vehicle recreation is not prohibited by the terms of the CE. The Commission accepts the explanation in PG&E's response that continued use of the Committee Trail is an informal use of the Property that is consistent with the intent of the CE. The Commission understands that legally, the Committee Trail is not a legally recognized encumbrance on the Property, but will be allowed subject to the terms and conditions of the CE. Furthermore, the Baseline Documentation Report has been modified to show that the use of the Committee Trail has long standing historical use. As such, continued use of the Committee Trail is documented as an existing informal use of the Property. The Commission understands that the informal continued use of the Trail will be subject to reasonable rules and regulations, liability limitations, and annual review with the CE holder to ensure the overall protection of the BPVs on the Property.

The Commission believes that enjoyment of the PG&E Watershed Lands by the general public, especially historic uses consistent with the overall BPVs, are an important legacy of the many years of effective PG&E stewardship. The Commission believes that the future CE holder will continue to honor this legacy. As such, the Commission is confident that OHV enthusiasts and the BYLT can work cooperatively to ensure that continued use of the Committee Trail remain consistent with the Property's BPVs. Therefore, the Commission believes that given the assurances of continued use of the Committee Trail given by PG&E in its response to Protesters, and the redrafting of the BDR to recognize the historic use of the Committee Trail by OHV enthusiasts and the general

public, the Commission dismisses the above protests and finds that the proposed CE is consistent with the requirements of the Settlement and Stipulation.

Camping at Fordyce Lake

The protesters expressed concern that informal camping at Fordyce Lake would be disallowed under the terms of the new CE. From the information contained in PG&E's response to Protesters, it is clear that within FERC boundaries, camping outside of designated campsites may be disallowed, once the new designated campsite facilities are built. This change is due to a FERC policy pertaining to Fordyce Lake Property within FERC jurisdiction, and not specifically due to the CE being donated to BYLT by PG&E. Because this policy pertains to lands in FERC jurisdiction, the Commission will not question the FERC Plan.

Furthermore, the Commission believes that the proposed new campsite construction warrants a "common sense" exemption from CEQA because the new facilities will minimize current and future impacts from campers.

However, the Commission understands that, if necessary, camping at informal user created campsites will continue to be allowable on PG&E owned land outside of the FERC jurisdictional boundaries.⁸ Again, the Commission is confident that responsible use of user-created, informal campsites can remain part of the Fordyce Lake outdoor experience, at least until such time as enough designated, primitive campsites can be developed to meet current demand. The Commission encourages the Protesters, BYLT, and PG&E to work cooperatively to ensure that this type of dispersed camping does not detract from Fordyce Lake's BPVs. Given the assurances of PG&E in its response to protests on this issue, the Commission believes that Protesters' concerns are adequately addressed in the LCCP and thereby dismisses the protests.

The Commission believes that PG&E's AL 4687-E, request for approval in accordance with the streamlined procedure adopted by the Commission in D.08-11-043, D.10-08-004 and Public Utilities Code Section 851, be granted. PG&E has

⁸ As an existing informal use of the Property, camping at user-created campsites will be governed per the terms of Section 9.2 and will not be expressly prohibited per the terms of the CE.

provided the information required by D.08-11-043 Ordering Paragraph 2.⁹ All of the information required by D.08-11-043 is included in the Fordyce Lake Planning Unit Conservation and Conveyance Plan (LCCP) and appended to PG&E AL 4687-E as Attachment A.

The Commission has reviewed PG&E AL 4687-E including the attached Fordyce Lake disposition package prepared by the Stewardship Council, the filed Protests and the response of PG&E, and has determined that the Fordyce Lake planning unit parcels 776-789 LCCP is both thorough and complete, and complies with both D.08-11-043, D.10-08-004, and with all of the ten Stipulation section 12(a) requirements adopted by D.03-12-035.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today. No comments were received.

⁹ For Category 1 transactions, PG&E shall submit a simplified advice letter to the Commission that shall include the following five items of information for the proposed transaction: (1) identification of Conservation Property parcel(s); (2) Type of property interest disposition(s); (3) Legal name and location of receiving party or parties; (4) the proposed use(s) and conservation management objectives with references to applicable section(s) of the Land Conservation Plan (LCP); and (5) Applicable exemption(s) under CEQA (where no exception to the exemption applies) with explanation, if necessary, or reason why transaction is not a "project" under CEQA. (D. 08-11-043 page 46)

FINDINGS

1. The Commission approved a PG&E bankruptcy settlement Agreement in D.03-12-035. Among other things, the Settlement Agreement contained provisions for certain environmental benefits. Those benefits included the adoption of the Land Conservation Commitment, which established provisions to permanently protect and enhance the approximately 140,000 acres of PG&E's watershed lands associated with its hydroelectric system, plus the 655 acre Carrizo Plains property in San Luis Obispo County.
2. D.03-12-035 established a Land Conservation Plan process and also helped establish a non-profit corporation named the Pacific Forest and Watershed Lands Stewardship Council to oversee the implementation of the Land Conservation Commitment and to carry out environmental enhancement activities.
3. D.03-12-035 authorized the creation of the Land Conservation Commitment and required PG&E through retail rates, to fund the Stewardship Council with \$70 million over 10 years to cover both the administrative expenses and the costs of environmental enhancements to the protected lands. D.03-12-035 also adopted the "Stipulation Resolving Issues Regarding the Land Conservation Commitment". The "Stipulation Resolving Issues Regarding the Land Conservation Commitment", Section 12 (a) describes the 10 informational components to be contained in the disposition document developed by the Pacific Forest Watershed Lands Stewardship Council for each donated parcel.
4. D.08-11-043, modified by D.10-08-004 established a streamlined Section 851 process for Advice Letters related to the PG&E Land Conservation Commitment.
5. On August 10, 2015, PG&E filed Advice Letter (AL) 4687-E Fordyce Lake Conservation Easement-Request for Approval under Public Utilities Code Section 851.

6. PG&E Advice Letter 4687-E complied with the streamlined procedures adopted by the Commission in D.08-11-043 as modified by D.10-08-004.
7. Advice Letter AL 4687-E was protested. PG&E replied to the protests of AL 4687-E on September 8, 2015.
8. The PG&E response to Ms. Campbell indicated that PG&E and the Stewardship Council had made the required notice to Ms. Campbell per D. 03-12-035, and that PG&E had contacted Ms. Campbell to clarify that AL 4687-E only pertained to PG&E owned lands.
9. The Protest of Ms. Campbell is dismissed as invalid.
10. The PG&E response to Mr. Stine, Ms. Snyder, Mr. Chavez, Mr. Hammond, Mr. Fitzgerald, Mr. Holland, Mr. Ebel, Mr. Cole, Mr. Liggiardi, Mr. and Mrs. Kohut, Mr. Marr, Ms. Theisen, Mr. Blewett, Mr. Story, Mr. Lee, and Mr. Poppelreiter, clearly explains that continued use of the Committee Trail by the OHV community and the general public, and camping at Fordyce Lake by the general public will be allowed under the terms of the CE.
11. The protest of Mr. Stine, Ms. Snyder, Mr. Chavez, Mr. Hammond, Mr. Fitzgerald, Mr. Holland, Mr. Ebel, Mr. Cole, Mr. Liggiardi, Mr. and Mrs. Kohut, Mr. Marr, Ms. Theisen, Mr. Blewett, Mr. Story, Mr. Lee, and Mr. Poppelreiter is dismissed. The clarifying information provided by PG&E demonstrates to the Commission that the conveyance of the proposed CE on the Property is consistent with the requirements of the Settlement and Stipulation.
12. AL 4687-E contained a LCCP that was compliant with D.03-12-035. The Stewardship Council prepared a LCCP for the Fordyce Lake planning unit conservation easement donation in compliance with D.03-12-035 and in accordance with the requirements set forth in Section 12(a) of the Stipulation Resolving Issues Regarding the Land Conservation Commitment.

13. In the LCCP, the Stewardship Council recommended that PG&E will retain, in fee-simple, the 14 parcels (776-789) of the Fordyce Lake planning unit and subject those parcels to a perpetual conservation easement. The Bear Yuba Land Trust was identified as the organization qualified to hold and manage the conservation easement over the property. The Stewardship Council documented in the LCCP the ability of each organization to enhance the Beneficial Public Values (BPVs) of the Fordyce Lake planning unit parcels in compliance with D.03-12-035.
14. The Stewardship Council did not identify any physical measures to enhance the BPVs of the Fordyce Lake planning unit parcels. However, a grant program is available to fund future physical measures, if deemed appropriate by PG&E and the Bear Yuba Land Trust.
15. The Fordyce Lake Environmental Site Assessment prepared by AMEC, Inc., dated October 25, 2011, found no potential hazardous waste, substance contamination, or other such environmental conditions on the property.
16. The proposed transaction constitutes no change in ownership and no proposed changes to land uses; thus no direct or indirect environmental impacts will occur as a result. Therefore, the transaction is exempt from review under the California Environmental Quality Act (CEQA). Accordingly, approval of this Advice Letter does not require review under CEQA.
17. PG&E will retain fee simple ownership of the land and will continue to pay property taxes to Nevada County as assessed by the State Board of Equalization.
18. As recommended by the Pacific Forest and Watershed Stewardship Council, PG&E proposes to retain fee-simple title to the 1,937 total acres of the Fordyce Lake Planning unit parcels 776-789. The Fordyce Lake planning unit parcels will be protected by a Conservation Easement administered by the Bear Yuba Land Trust.

19. The remaining parcels in the Fordyce Lake Planning Unit will be subject to separate conservation agreements.
20. The Stewardship Council has entered into a Conservation Easement Funding Agreement with the Bear Yuba Land Trust to establish a monitoring endowment for costs the Bear Yuba Land Trust will incur for monitoring activities at the Fordyce Lake Property.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas & Electric Company for approval of the Fordyce Lake Conservation Easement Donation as requested in AL 4687-E is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held April 21, 2016; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director